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UMG RECORDINGS, INC.; ARISTA RECORDS  
LLC; ELEKTRA ENTERTAINMENT GROUP  
INC.; CAPITOL RECORDS, INC.; LAFACE  
RECORDS LLC; SONY BMG MUSIC  
ENTERTAINMENT; and MOTOWN RECORD  
COMPANY, L.P.

E-FILED 7/9/08

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

UMG RECORDINGS, INC., a Delaware  
corporation; ARISTA RECORDS LLC, a  
Delaware limited liability company; ELEKTRA  
ENTERTAINMENT GROUP INC., a Delaware  
corporation; CAPITOL RECORDS, INC., a  
Delaware corporation; LAFACE RECORDS  
LLC, a Delaware limited liability company;  
SONY BMG MUSIC ENTERTAINMENT, a  
Delaware general partnership; and MOTOWN  
RECORD COMPANY, L.P., a California  
limited partnership,

Plaintiffs,

v.

JOHN DOE,

Defendant.

CASE NO. 5:07-CV-06033-RMW

Honorable Ronald M. Whyte

**EX PARTE APPLICATION TO EXTEND  
TIME TO SERVE DEFENDANT AND**

**[XXXXXXXXXXXXX] ORDER**

EX PARTE APPLICATION TO EXTEND TIME TO SERVE DEFENDANT AND [PROPOSED] ORDER

CASE NO. 5:07-CV-06033-RMW

#38442 V1

1 Plaintiffs respectfully request, pursuant to the Federal Rules of Civil Procedure, Rules 4(m)  
2 and 6(b)(1)(A), that the Court grant an additional 60 days to serve Defendant with the Summons and  
3 Complaint. As further explained below, Plaintiffs have believe they have discovered the identity of  
4 the Doe defendant in this case and have contacted this person in an attempt to resolve the dispute  
5 without further litigation. Plaintiffs thus seek additional time to effectuate service in the event the  
6 dispute is not resolved and Plaintiffs file a First Amended Complaint naming Defendant  
7 individually. In support of their request, Plaintiffs state as follows:

8 1. The current deadline for service of process is June 26, 2008. The initial case  
9 management conference is set for July 25, at 10:30 a.m. The case management conference and  
10 service deadline were both previously continued once upon Plaintiffs' request by the Court's Order  
11 of March 19, 2008.

12 2. Plaintiffs filed their Complaint for Copyright Infringement against Defendant John  
13 Doe ("Defendant") on November 29, 2007. Plaintiffs did not have sufficient identifying information  
14 to name Defendant in the Complaint, but were able to identify Defendant by the Internet Protocol  
15 address assigned to Defendant by Defendant's Internet Service Provider ("ISP") – here, University  
16 of California, Berkeley.

17 3. In order to determine Defendant's true name and identity, Plaintiffs filed their *Ex*  
18 *Parte* Application for Leave to Take Immediate Discovery on November 29, 2007, requesting that  
19 the Court enter an Order allowing Plaintiffs to serve a Rule 45 subpoena on the ISP.

20 4. Plaintiffs withdrew their *Ex Parte* Application for Leave to take Immediate Discovery  
21 on March 17, 2008, because, upon receiving notice of the lawsuit from the ISP, the Defendant,  
22 though her attorney, came forward to identify herself.

23 5. Thereafter, settlement discussions took place with Defendant and her attorney, and  
24 Plaintiffs believe that a settlement has been reached. Settlement documents were mailed on May 29,  
25 2008, but have not yet been executed and returned to Plaintiffs.

26 6. If the signed settlement documents are returned by July 15, 2008 or shortly thereafter,  
27 Plaintiffs will file appropriate dispositional documents with the Court. If not, Plaintiffs plan to file a  
28

1 First Amended Complaint naming the Defendant in this case, and then proceed to serve process upon  
2 her.

3 7. Given the circumstances of this case, Plaintiffs respectfully request an additional 60  
4 days to effectuate service.

5 8. Plaintiffs submit that their efforts to notify Defendant of their claims and resolve the  
6 case before naming her in the lawsuit constitute good cause for any delay in perfecting service. *See*  
7 *Ritts v. Dealers Alliance Credit Corp.*, 989 F. Supp. 1475, 1479 (N.D. Ga. 1997) (stating good cause  
8 standard for service extensions). Moreover, unlike a traditional case in which the defendant is  
9 known by name and efforts to serve can begin immediately after filing the complaint, in this case  
10 Plaintiffs first attempted obtain the identity of the defendant through the subpoena to the ISP. This  
11 Court has discretion to enlarge the time to serve even where there is no good cause shown.  
12 *Henderson v. United States*, 517 U.S. 654, 658 n. 5 (1996).

13 9. Because the copyright infringements here occurred in 2007, the three-year limitations  
14 period for these claims has not expired. *See* 17 U.S.C. § 507(b) (2000). There can thus be no  
15 prejudice to the Defendant from any delay in serving the Complaint.

16 10. Plaintiffs will provide the Defendant with a copy of this request and any Order  
17 concerning this request when service of process occurs.

18  
19 Dated: September 20, 2007

HOLME ROBERTS & OWEN LLP

20  
21 By: /s/ Dawniell Alise Zavala

22 DAWNIELL ALISE ZAVALA

23 Attorney for Plaintiffs

24 UMG RECORDINGS, INC.; ARISTA

RECORDS LLC; ELEKTRA

25 ENTERTAINMENT GROUP INC.;

CAPITOL RECORDS, INC.; LAFACE

26 RECORDS LLC; SONY BMG MUSIC

27 ENTERTAINMENT; and MOTOWN

RECORD COMPANY, L.P.

**[PROPOSED] ORDER**

Good cause having been shown:

**IT IS ORDERED** that, pursuant to the Federal Rules of Civil Procedure, Rules 4(m) and 6(b)(1), Plaintiffs' time to serve the Summons and Complaint on Defendant be extended to August 22, 2008.

Dated: 7/9/08

By: /s/ Ronald M. Whyte  
Honorable Ronald M. Whyte  
United States District Judge